

Jacob C. (Chris) Martin
306 Cypress Court
Franklin, Tn. 37069

May 25, 2000

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tn. 37201

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TN REGULATORY AUTHORITY

Dear Mr. Waddell:

This letter is my formal "Petition for Reconsideration" of the Authority's "Order Approving Rate Increase" dated May 10, 2000, in the matter of Lynwood Utility Corporation, docket number 99-00507.

As you know, I reside in the Cottonwood Estates subdivision, and wrote you in the early part of April this year when I first received notice from Lynwood Utility detailing their rate increase that had just gone into effect. You responded promptly and provided me the information necessary for me to find the T.R.A. web site and read the documents submitted and posted since July, 1999, in this case.

The records show that a public notice (those things that no one reads that are printed near the classified section of the newspaper) of the rate increase petition was published. If anyone read it, it appears that no one understood the magnitude of its impact on the rates. Regardless of that, I have, to the best of my ability, in my not too spare time, perused the T.R.A. documentation available on your web site. It has led me to conclude that while a rate increase of some degree is justifiable, the amount requested by Lynwood Utility and approved by the Authority is excessive. There are several elements of the rate increase; one is tap fees, one is connection fees, one is rates for non-residential users, and one is the rate for residential users. My focus has been on the requested rate of \$5.77 per 1,000 gallons of water used each month for residential users, and that, specifically, is the part of the rate increase I am petitioning the Authority to reconsider.

Based on my review of the records in this case, I will begin by stating some of the background information contained in the record and follow that with my conclusions.

BACKGROUND

Since 1996, the Lynwood Utility sewage treatment facility has transferred from the ownership of Martin Zeitlin to David Terry and then to Southern Utility Corporation.

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The interest of Mr. Terry and Southern Utility Corporation in Lynwood Utility was to obtain access to the sewage treatment facilities to service the new subdivisions (Legends Ridge and River Landing) they wished to develop. Without access to the existing Lynwood Utility plant, it is unlikely they would be able develop their properties.

In 1996, David Terry obtained ownership of Lynwood Utility Company from Martin Zeitlin and incorporated as Lynwood Utility Corporation. This transfer of ownership was not approved by the Tennessee Regulatory Authority or the Tennessee Public Service Commission.

In 1999, Southern Utility Corporation assumed ownership of Lynwood Utility Corporation from David Terry. No regulatory approval was sought or granted prior to this ownership change.

In 1999, Southern Utility Corporation was created by Smith Crowe Wilson, LLC for the sole purpose of ownership and operation of the Lynwood Utility Corporation. Smith Crowe Wilson, LLC, the real estate company that created Southern Utility Corporation, is developing the River Landing subdivision for Lumbermen's Investment Corp.

On May 30, 1997, David Terry, in the name of Lynwood Utility Corporation, borrowed \$305,000 from First Tennessee Bank. The stated purpose of the loan was to fund expansion of the Lynwood sewage treatment plant in order to handle the additional volume from Mr. Terry's Legends Ridge subdivision. Mr. Terry's loan agreement with First Tennessee Bank stated he would repay the loan in one year. The money to repay the loan was to come from the sewer tap fees Mr. Terry would charge on the lots he sold in Legends Ridge. It is alleged that Mr. Terry waived the tap fees, however, and he never repaid the loan. For reasons unknown at this time, and apparently not pursued by the Authority in its review of Lynwoods petition, First Tennessee Bank never exercised any of the recourse available to it in order to secure payment of this loan. It should be noted that the records reflect that First Tennessee Bank had loaned \$3.8 million or more to Mr. Terry and Legends Ridge Properties, LLC for the development of Legends Ridge subdivision.

In June, 1998, Lumbermen's Investment Corporation entered into an agreement with David Terry, owner of Lynwood Utility, in which Lynwood Utility agreed to provide sewer service to the 187 lots planned for Lumbermen's new housing development, River Landing, in return for Lumbermen's providing unspecified funding for expansion and improvements to the Lynwood Utility sewage treatment plant.

Lumbermen's claims it was unaware that the \$305,000 First Tennessee Bank loan was in default at the time that Lumbermen's entered into the agreement with Mr. Terry and Lynwood Utility on June 28, 1998. On December 17, 1998, the loan was assigned to Lumbermen's, and Lumbermen's, through its developer, Smith Crowe Wilson, LLC and one of Smith Crowe Wilson's principals, Davis Lamb, took over the

day to day operation of Lynwood.

Smith Crowe Wilson, LLC created Southern Utility Corporation as a separate corporate entity which purchased Lynwood Utility from David Terry on May 12, 1999.

On July 15, 1999, the new owners of Lynwood Utility filed a petition with the Tennessee Regulatory Authority for a rate increase. They stated that the revenues generated by Lynwood Utility were insufficient to pay operating expenses. Of course, the operating expenses were now substantially higher than they were prior to 1997 due to substantial amounts of money borrowed from First Tennessee Bank and Lumbermen's and allegedly spent on plant expansion. Also included in the operating expenses used to justify a rate increase was \$3,000 per month in management fees paid to Davis Lamb; this was an expense that was not incurred under previous ownership. Most significantly, Lynwood Utility cited debts in the form of 1) large amounts of money it states was advanced to it by Lumbermen's to fund plant expansion, improvements, and repairs, and 2) the \$305,000 loan from First Tennessee Bank that remains in default to this day, three years after the loan was made and two years after it was due for repayment under the loan agreement. In addition, the rate increase is designed to provide a profit for Lumbermen's, Lynwood Utility, Smith Crowe Wilson, LLC, Davis Lamb, et. al.

Lynwood Utility petitioned for a new rate of \$5.77 per 1,000 gallons of water used each month. This rate would mean that Lynwood Utility customers will pay rates that are enormously higher than what they had paid in the past and significantly higher than rates charged by our neighbors who live outside Franklin city limits, but receive sewer service from the Franklin sewer system or the rates paid for Metro Nashville sewer service. Sewer service for 8,000 gallons of water used in Franklin is \$27.10, in Metro Nashville \$38.64, and Lynwood Utility is \$46.16. A similar comparison based on 12,000 gallons used is \$40.85 for Franklin, \$59.69 for Nashville, and \$69.24 for Lynwood Utility.

There are approximately 480 homes in the Cottonwood Estates subdivision which, up until Mr. Terry sought to add his Legends Ridge subdivision, were, essentially, the sole customers of Lynwood Utility. The fee structure in effect prior to this most recent change was based on the number of bedrooms in the home. The average sewer bill was about \$15 or \$16 per month.

Cottonwood residents, as represented by the officers of the Cottonwood Homeowners' Association, have met on numerous occasions over the past several years with Lynwood Utility as personified first by David Terry and more recently by Davis Lamb. It is now apparent to the officers of the Cottonwood Homeowners' Association that they were, putting it in the kindest words possible, misled by Lynwood Utility about the economic impact that the addition of Legends Ridge and River Landing subdivisions would have on the residents of Cottonwood.

CONCLUSIONS

The rate schedule being requested by Lynwood Utility is substantially higher than comparable service being provided in this area by other sewage treatment facilities.

Since 1996, Lynwood Utility has been owned by individual and corporate entities whose interest was in gaining access to sewage treatment for housing subdivisions they wished to develop.

There is substantial evidence to call into question the motives and actions of the various parties involved. Individuals and corporations seeking substantial profits from land development (Legends Ridge and River Landing) needed Lynwood Utility and invested in it carelessly and with apparent lack of due diligence. They appear to have considered money invested in Lynwood Utility as "risk free" because they are asking the residents of Cottonwood to reimburse them for their investment plus a profit. In essence, Cottonwood residents are subsidizing their property developments.

There is substantial evidence that the various owners of Lynwood Utility since 1996 have not engaged in good faith dealings with the residents of Cottonwood as represented by their Homeowners' Association board of directors.

The experience of Legends Ridge property owners with David Terry, the developer, regarding maintenance of the development, completion of the amenities (clubhouse, swimming pool, golf course), as well as Mr. Terry's continuing failure to adhere to environmental regulations and correct faults that are detrimental to the environment serve as further evidence of the character of the parties involved.

Similarly, the self-serving conduct reflected in the record by Davis Lamb as an owner of Smith Crowe Wilson, LLC should cause the Authority to seriously question their actions.

Investors and developers have a right to develop property in accordance with the applicable laws. In this case, the record indicates they did not follow the law as it relates to reporting to and securing approval of the Tennessee Regulatory Authority before a utility changes ownership or incurs debts it will not repay within a year. Developers must not have the right to ignore the T.R.A. regulations, incur expenses and debts for the purpose of insuring the viability of their developments, and then claim reimbursement from the residents (Cottonwood residents in this case) who have no vested interest in the new developments and will not share in the developers' profits.

Rather than rewarding the owners of Lynwood Utility, both past and present, the

Authority should consider sanctioning them for their actions if it is within their authority to do so.

Finally, it is reasonable to conclude that a sewer rate increase for Cottonwood residents would have been necessary due to normally rising operating costs and needed plant maintenance and improvements, even if the plant had not been expanded to accommodate Legends Ridge and River Landing. At this time, the amount is not known, but one would expect that rates might be somewhat comparable to other utilities in the area.

I would ask the Authority to reconsider its action in this case. It still has not taken testimony from David Terry that had been planned for March, but was postponed at the request of Donald Scoles, attorney for Lynwood Utility. Also, I believe a more complete accounting and exploration by the Authority of all the money transactions, including funds advanced from Lumbersmens', the loan from First Tennessee Bank, and the property transfer from Martin Zeitlin to David Terry and from David Terry to Southern Utility Corporation should be undertaken.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Chris Martin".

Jacob C. (Chris) Martin

cc: Mr. Davis Lamb; Lynwood Utility Corporation
Mr. Melvin Malone; Chairman, Tennessee Regulatory Authority
Ms. Sara Kyle; Director, Tennessee Regulatory Authority
Mr. Lynn Greer; Director, Tennessee Regulatory Authority
Mr. Jeff Clark; President, Cottonwood Homeowners' Association